IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Regular Second Appeal No.331 of 1995

Date of decision: 1.6.2007

Jagdishwari Devi and others **Appellants**

Versus

State of H.P. **Respondent**

Coram

The Hon'ble Mr. Justice Surjit Singh, J.

Whether approved for reporting ?[1] *yes*

For the appellant: **Mr. K.D. Sood, Advocate.**

For the Respondent: **Mr. V.K. Verma, Additional Advocate General.**

Surjit Singh, J (oral)

Appellants' predecessor, Beli Ram, hereinafter referred to as plaintiff or deceased plaintiff, filed a suit for declaration that he had acquired title to land measuring 0-11-64 hectares, bearing Khasra Nos. 264, 262, 263 and 263/1, situate in Mohal Sunehar, Mouza Kohala, Tehsil Kangra, as per entries in the jamabandi for the year 1978-79, on account of the respondent-defendant's (State of H.P) failure to get the mortgage in respect of the said land redeemed within the time prescribed by law for the purpose. It was alleged that the suit land had been mortgaged to late Shri Ranjha Ram, the father of the deceased plaintiff Beli Ram, in the year 1901-02. The mortgage was alleged to be with possession. It was stated that the suit land was initially ***Shamlat*** land and it vested in the Panchayat under the provisions the Punjab Village Common Lands (Regulation) Act, 1961, hereinafter referred to as the 'Punjab Act', and that after the coming

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***?

into force of the Himachal Pradesh Village Common Lands (Vesting and Utilisation) Act, 1974, hereinafter referred to as 'the Himachal Act', the land vested in the State of Himachal Pradesh. However, the plaintiff continued to be in possession of the land as a mortgagee and his mortgage was saved by the Punjab Act. It was alleged that the mortgage having not been redeemed within the time prescribed for redemption, the plaintiff had become owner by afflux of time. Beli Ram died during the pendency of the suit. His legal representatives, some of whom are the present plaintiffs, were brought on record. They amended the plaint. They dropped the relief of declaration that they had become owners by afflux of time, but persisted in the relief of permanent prohibitory injunction restraining the State of H.P, i.e. the respondent-defendant, from interfering in their possession.

2. Suit was contested by the respondent-defendant. It was alleged that at no point of time the plaintiffs had been in possession of the suit land. Plea of mortgage, as set up by the plaintiffs, was controverted. Various preliminary objections were also raised.

3. Trial Court returned the finding that the plaintiffs had become the owners of the suit land by afflux of time. It was also held that the plaintiffs had been in possession of the suit land initially as mortgagees, and on expiry of the time prescribed for redemption of mortgage, as owners. Issues based on the preliminary objections of the respondent-defendant were found against it. Consequently, the suit was decreed.

4. Respondent-defendant filed an appeal in the Court of District Judge. The learned District Judge held that the document regarding creation of mortgage having not been produced and the entries in the revenue papers being the secondary evidence of mortgage and no permission of the Court having been obtained for leading secondary

evidence, it could not be said that the plea of mortgage, as set up by the plaintiffs, stood proved. With this finding, the learned District Judge accepted the appeal and reversed the findings of the trial Court.

5. Appellant then filed the present appeal in this Court which was admitted on the following substantial questions of law:-

> "1. Whether the Court below has misconstrued and misread the provisions of the Punjab Village Common Land (Regulation) Act and the H.P. Village Common Land (Vesting and Utilisation) Act, 1974 and the findings are vitiated?
>
> 2. Whether on the material on record, it was established that the appellants who were in possession of the property since 1901 and the property having been transferred and cultivated by them, the provisions of the H.P. Village Common Land (Vesting and Utilisation) Act, and the Punjab Village Common Land (Regulation) Act were applicable in the case and the property could vest from all encumbrances?
>
> 3. Whether the civil Court below had jurisdiction to grant the relief of declaration and injunction?
>
> 4. Whether the Court below has failed to raise legal presumption arising out of the revenue records to which presumption of truth is attached and the evidence on record has been misread and misconstrued which has vitiated the findings?"

6. I have heard the learned counsel for the parties and perused the record. View taken by the learned District Judge that in the absence of proof of mortgage deed, finding cannot be returned in favour of the appellants-plaintiffs that they are the mortgagees, on the basis of the entries in the revenue papers, is too hyper technical. Entry appeared in favour of Ranjha Ram, the father of the deceased plaintiff Beli Ram for the first time in the jamabandi for the year 1901-02, on the basis of an order of mutation. The order of mutation was proved on record. Copy of the said order is Ext.P-8. Nobody ever challenged this mutation. As per this

mutation, mortgage was created in favour of Ranjha Ram as security for a loan of Rs.115, by the proprietary body. Entries have been continuing in favour of the plaintiffs-appellants since the year 1901. Initially, the predecessor of the plaintiffs-appellants was recorded in possession of 2 Kanals 17 Marlas of land, bearing Khasra Nos. 44 and 45, per jamabandi for the year 1901-02, copy Ext.P-11. However, in the jamabandi for the year 1915-16, copy Ext.P-10, the predecessor of the plaintiffs-appellants, was shown to be in possession of 3 Kanals 2 Marlas area, bearing Khasra Nos. 147 and 146. Khasra No.147 included old Khasra Nos.44 and 45. Khasra No.146 was the new number for old Khasra No.43. This old Khasra No.43 was not part of the property mortgaged with predecessor of the plaintiffs. In the jamabandi for the year 1959-60, Khasra Nos. 147 and 146, were amalgamated into one Khasra number, i.e. Khasra No.143 and the predecessor of the plaintiffs-appellants was shown to be mortgagee in respect of both the numbers, the total area of which was 3 Kanals 5 Marlas. Per jamabandi for the year 1973-74 (Ext. D-IV), Khasra No. 143 was broken into four numbers, i.e Khasra Nos. 264, 262, 263 and 263/1. Appellants-plaintiffs were shown to be in possession of Khasra No.264, measuring 0-07-31 hectares as mortgagees, while in respect of the remaining three Khasra numbers, measuring 0-04-33 hectares, Revenue Department of the respondent-defendant, was shown to be in possession. This position continued to be reflected in the subsequent jamabandis right upto the year 1991-92, as is made out from the jamabandis for the years 1979-80, copy Ext.D-5; 1986-87, copy Ext. D-6 and 1991-92, copy Ext.D-7.

7. From the above stated position, it is clear that mortgage with possession was created in favour of Ranjha Ram, the predecessor of the appellants-plaintiffs in respect of 2 Kanlas 17 Marlas area, equivalent to

about 731 square metres which has now been shown in possession of the appellants-plaintiffs as mortgagees. It is not clear from the record as to how the area of the mortgaged property increased to 3 Kanals 2 Marlas in the jamabandi for the year 1915-16. Therefore, there should be no escape from the conclusion that the mortgage that was created in favour of the predecessor of the appellants-plaintiffs was in respect of 0731 square metres approximately only. Appellants-plaintiffs are being shown in possession of this land upto date in the capacity of mortgagees.

8. Initially, the land mortgaged with the appellants-plaintiffs' predecessor, was ***Shamlat*** land. It vested in the Panchayat under the Punjab Act because at the relevant time, the area was part of the erstwhile State of Punjab. However, by virtue of clause (iii) of sub-section (3) of Section 4 of the Punjab Act, the rights of the predecessor of the appellants-plaintiffs as mortgagee, were not affected by the vestment of the land in the Panchayat. Section 4 of the Punjab Act reads as follows:

> "**Section 4. Vesting of rights in Panchayats and non-proprietors. –** (1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any Court or other authority, all rights, title and interests whatever in the land, -
>
> (a) which is included in the shamilat deh of any village and which has not vested in a Panchayat under the shamilat law shall, at the commencement of this Act, vest in a panchayat constituted for such village, and, where no such panchayat has been constituted for such village, vest in the Panchayat on such date as a panchayat having jurisdiction over that village is constituted;
>
> (b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall on the commencement of the shamilat law, be deemed to have been vested in such non-proprietor.

> (2) Any land which is vested in a panchayat under the shamilat law shall be deemed to have been vested in the panchayat under this Act.
>
> (3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the-
>
> (i) existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholidars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqararidars;
>
> (ii) rights of persons in cultivating possession of shamilat deh for more than twelve years [immediately proceeding the commencement of the Act] without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;
>
> (iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950."

9. In view of the provision of clause (iii) of sub-section (3) as reproduced above, even after the vestment of the property in the Panchayat under the Punjab Act, the rights of the predecessor of the appellants-plaintiffs as mortgagee remained intact and unaffected. Later on, the land vested in the State of H.P. under the Himachal Act and in place of the Gram Panchayat, the State of H.P. was recorded as owner of the land in the revenue papers, after attestation of mutation. However, that did not affect the rights of the appellants-plaintiffs or their predecessor as mortgagee and that is why, the appellants-plaintiffs are still being recorded as mortgagees of the land in the revenue papers. The Himachal Act does not extinguish the rights (of the mortgagees or other persons) which were kept unaffected by the aforesaid provision of the Punjab Act. Section 3 of the Himachal Act provides for the vestment of the rights of the landowners in the Government without saying anything about the rights of the mortgagees or other persons and "landowner" as per definition contained

in Section 2(d) of the Himachal Act, means a person having a share in the shamilat land as recorded in the land records and includes a panchayat. That means, what vested in the respondent-defendant under the Himachal Act by virtue of the provision of Section 3 of the said Act, is the panchayat's rights in the land as mortgagor.

10. Limitation for seeking the redemption of the mortgage having expired long-long back, now the State of Himachal Pradesh, i.e the respondent-defendant, has lost the right to ask for redemption and to recover the possession of the mortgaged land, i.e. land bearing Khasra No.264, measuring 731 square metres, which as per revenue record, continues to be in possession of the appellants-plaintiffs in the capacity of mortgagees.

11. Civil Court's jurisdiction is barred under Section 10 of the Himachal Act when some order made by the Collector or the State Government or any other officer authorized by the State Government is sought to be challenged. In the present case, no order of the Collector or State Government or any authorized officer, has been challenged and so, it cannot be said that the Civil Court lacks jurisdiction to grant the relief asked for by the appellants-plaintiffs.

12. As a result of the above stated position, all the substantial questions of law on which the appeal was admitted, are answered in favour of the appellants-plaintiffs. Consequently, the appeal is accepted. Judgement and decree of the first appellate Court are set aside. Judgement and decree of the trial Court are restored with the modification in the operative part of the judgment and the decree of the trial Court that the appellants-plaintiffs are owners in possession of only 731 square metres of land, comprised in Khasra No.264 instead of the entire suit land and the respondent-defendant is restrained by way of permanent

prohibitory injunction from causing any interference in the aforesaid 731 square meters land, possessed by the appellants-plaintiffs.

The appeal disposed of.

June 1, 2007 **(Surjit Singh)**
(ss) **Judge**